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THE NATION SHOULD SUPERINTEND ALL CARRIERS

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To clearly state a question, one may assume some matters as axioms without necessarily giving them adherence. When however, in a democratic country, the question put is political, such assumption justifies a suspicion that the speaker believes the sense of the majority, if not a majority of the sensible, to be in favor of the matters taken for granted.

In this spirit I regard as axiomatic these propositions,—that corporations require governmental control; have received too little in the past, and will get a great deal more in the future; that the desire for such control grows largely out of the majority belief that men accustomed to large affairs are somehow untrustworthy, and must be restrained by those less competent in business but more numerous at the polls; that any business affected by a public use must be regarded as a public trust, wherein the trustee is to be governmentally coerced into conduct primarily pleasing to the majority, and it is charitably and sometimes pharisaically hoped, incidentally profitable to himself; and that this governmental control must usually be in the hands either of Congress or a legislature, but in some cases should be divided between them. After making these assumptions, I believe the subject in hand is an inquiry, as to which control center will upon the whole yield the greatest degree of justice, compatible with public convenience.

If the discussion were to take full scope, it might well be asked why *corporate* control only should be considered, for it is obvious that control of corporations as corporate bodies is a comparatively small matter. It is control of *business*, at present largely conducted by chartered companies, that is the question of the hour, in a day when economics have become politics, and political economists are thought producible by referendum or initiative. If business is

to be controlled, it is obvious enough that the substance thereof and not the form of transacting it must be finally regarded by the law,—partnership and private affairs will not be protected from governmental supervision by any absence of incorporation.

Since, therefore, several hundred years of legal history have marked the business of a public or common carrier as one peculiarly within the regulatory or police power of the sovereign, I have ventured, on your president's kind invitation, to speak regarding, not the legality, nor immediate possibility, but ultimate necessity of national control of carriers if the demand for supervision remains insistent. The argument of convenience will usually win in the long run, unless it encounters a moral principle, and that argument favors a centralized control, removed alike from local prejudice and local pride. Is there any moral principle, requiring a business covering navigation, railroads, expressage, telephony and telegraphy, to remain for the most part under the control of forty-six sets of regulations and regulators, when the business itself is national and international, and competition has perceptibly become an economic international conflict?

The impossibility of a fair uniformity, or uniform fairness on the part of so many laws, legislatures and commissions, to the men and affairs regulated, will in time weary all but those who hope for place under one of the conflicting systems, or doctrinaires to whom a theory is dearer than the removal of conditions, however odious. For modern evidence of how divergent and irreconcilable in scope and purpose, and how impotent for ultimate good, our present multifarious systems are and must be, one need but read the published reports of proceedings of the National Association of Railway Commissioners, bulky volumes, not to be considered without sorrow and some cynical amusement.

Secretary Root has recently appealed to the several states to bestir themselves for more efficient governmental regulations, and to subordinate local interests to general welfare. His voice is of one crying in the wilderness, for it is as true now as when Mr. Pinckney said it in 1787, that "States pursue their interests with less scruples than individuals." The Supreme Court has already repeatedly considered endeavors of state authorities to compel the transaction of railway business in a particular state or part of a state at a loss, upon the plea that the interstate business of the

compelled corporation was sufficiently profitable to warrant the local gift. Such a gift is indeed a benevolence in the legal and disreputable meaning of the word. Nor has it been unknown that men in local authority have threatened carriers with drastic hostility in local matters, were not interstate rates made more agreeable to constituents. This is retaliation, not administration, and until the unity of commerce is recognized by putting its agencies under one control, such manifestations of local self-seeking will continue, and probably increase.

It is now notoriously true that the carrying enterprises of the nation, from railways to telephones, are largely owned (if not abroad) in parts of the Union remote from the carrier's region of operation. Can it be denied that the last few years have shown a determined recognition and punishment of absentee landlordism on the part of local authorities engaged in regulating carrying corporations? Such denial is impossible, and it is equally impossible to anticipate a termination of that condition as long as local capital remains as limited as it is in most of the United States, while local rates for money remain higher than the highest return reasonably to be expected from the carrying trade conducted through corporate organization. In most of the states local money does not go into the carrying trade, because it can be more gainfully employed otherwise, but that fact never induces local authorities to recognize the local money rate as the carrier's return rate. It is surely a legitimate position for the public to take, that the owners of the carrying corporations shall have a voice, however still and small, in the selection of their regulators, by making the selection a national and not a local affair.

Again, if conditions perfectly well understood in our older and richer states be considered, the observer must recognize as a figure familiar in the business and political background the corporation of numerous local shareholders of large local influence, and for the time being obnoxious to no considerable class in the community. Has a foreign rival, a new competitor, a fair chance before the local regulatory bodies in opposition to such a carrying corporation? No man of experience in interstate business can answer that question affirmatively, and by just so much as local regulation becomes more organized and better established and more drastic if not more efficient, by just that much will local

pride and local prejudice give to local enterprises a preference undue under the law and undesirable for the people at large. Nor is it either a vain imagining or a jeremiad that a really active, vigorous and selfishly able administration of the carrying business by the coast states may become, and in no long time, a serious grievance to interior producers.

But it is not an unusual change of public attitude for a corporation to become, through the misdoings of one man or the mistakes of a few, an object of local execration. Its pursuit and punishment become political virtues, in which all parties strive to excel. This condition is so frequent to-day, that to name any special corporation would be an invidious distinction. Will not national control allay, if not prevent, local inflammation and render more difficult destruction of what should be cured, but need not be killed in the process?

The relation of foreign to domestic commerce is a subject not to be exhausted by many hours of discussion, and it is of growing importance. The two are interdependent. If domestic operations are disturbed or ill-managed, foreign commerce will suffer. While no matter how well arranged the local management of a state's commercial affairs may be, no one state is strong enough to withstand, and indeed it will not ordinarily discover until too late, foreign domination of its domestic commerce. I do not admit this to be wholly a glance into the future, but the facts of to-day are not publicly understood, and probably nothing will convince any considerable portion of the people of the United States that a real danger here exists, until they discover themselves pecuniarily injured, and by overwhelming evidence.

There is another matter very presently before the public, and as to which the utter inefficiency of state control has been demonstrated beyond peradventure. Next to land investments, the railroads of this country most largely represent the savings of the labor of an industrious people for some hundreds of years. Mr. Mather, of the Rock Island Company, said last fall: "There is a prevailing public belief, based on facts publicly known, that railroad corporations have issued corporate obligations and applied the proceeds to purposes other than those for which such obligations may lawfully be issued." This he regards as the great railway wrong doing—well known and long continued, and princi-

pally productive of that condition of the public mind, which renders our present discussion opportune. He need not have confined his indictment to railroads. The carrying corporations as a class are not more guilty than others, but they have greater opportunities of guilt. With inconsiderable exceptions every carrying corporation in the country is incorporated by a state. Have the states generally attempted to limit the capacity of their corporate creatures for working harm in this way? Certainly not. And can they do it? Considering how states bid against each other for corporate business, it is doubtful. Would they do it if they could? What inducement is there for either the legislative or the executive department of a small or poor state to control the financial operations of a corporation whose financial business is wholly conducted in other states? There is no self-interest requiring the regulations, and I doubt the power of altruism to bring it about.

No one believes, and I am as far as possible from asserting, that national control would be perfect or always wise, but it is necessary. If it be worth while to avoid unnecessary multiplication of conflicting laws; to set a bound upon local selfishness; to protect those citizens whose property is represented in carrying corporations of states not their own; to limit the power of some favored corporations; to protect perhaps the same corporations when political rancor turns against them; to recognize and foster the close relation between foreign and domestic commerce, while presenting a firm front to un-American domination, and to limit by national power the financial operations of common carriers of all sorts then national control must come. If these things be worth attempting or possessing, then so far as the legal framework of our country will permit, the effort of all thoughtful citizens should be to secure control of all the instrumentalities of commerce for the nation as opposed to any and every smaller governmental unit. Whether the result which seems to me desirable be also constitutional is a question not to be elucidated in twenty minutes or twenty days—nor is this the place for such technical discussion.

I have not attempted a brief nor set a program, but have ventured to indicate a desirable goal towards which may press those who have no local axes to grind nor scalps to take and who believe that what is national in extent should not be parochially administered. It may, however, be safely asserted that the field of national

control over the instruments of commerce has scarcely been surveyed, and the legal possibilities within that field are surely large enough in a country where the chairman of one of the committees which reported the Sherman Anti-Trust Law declined to hazard an opinion as to what contracts were covered by the statute he favored, and put his refusal upon the ground that he did not know, and it was the business of the courts to find out.

Is this result, even if desirable and in large part legally attainable, practically possible? No man can tell until the attempt is made. National effort of every kind has in this country usually been regarded as a last resort, something only to be attempted when local failure was so evident that even jealousy could no longer deny the truth.

The present is a time as ripe as ever will be for endeavors to direct national power, not into new fields, but into portions of the old domain hitherto unsubdued. Perhaps, indeed, the present is a peculiarly appropriate time, for just now the cry of monopoly is so popular and the belief therein so widespread, that we have even been seriously told by a noted senator that no more than a hundred men control the business fate of this nation, and in proof thereof he has spread upon the long-suffering pages of the Congressional Record the names and corporate relations of that century of oppressors. Yet with such gravity does a people, which talks far too much of its own sense of humor, regard these statements, that no one has objected that of these tyrants a considerable proportion some time since departed this life; and that one despot is hateful in part because he is a trustee of the Young Men's Christian Association—of Chicago, to be sure.

If, therefore, one does not believe in the present existence of grinding monopoly, yet recognizes the existing demand for regulation, I have already tried to point out reasons for urging national control; but every honest believer in monopoly will in time perceive that centralization cannot be successfully fought by parishes, nor monopoly by confusion, any more than was union by disunion. The ultimate argument will be, and indeed now is, that wherever national union is possible national regulation is necessary, and national co-operation, if not union, is already among carriers of all kinds more than a dream, and its actuality is regarded as beneficent by an overwhelming majority of business men whose opinions are com-

mercially worth having; and these are the men who will more and more nationally unite to do that sort of business which requires national regulation. Will your personal influence be for efficiency in large matters and wholesome neglect in small? If so, I believe you will ultimately advocate national control.